

**United States Court of Appeals
for the District of Columbia Circuit**

No. 24-1113

(and Consolidated Cases 24-1130 & 24-1183)

TIKTOK INC. and BYTEDANCE LTD.,

Petitioners,

v.

MERRICK B. GARLAND, in his official capacity as
Attorney General of the United States,

Respondent.

(For Continuation of Caption See Inside Cover)

*On Petition for Review of Constitutionality of the Protecting
Americans from Foreign Adversary Controlled Applications Act*

**BRIEF OF AMICI CURIAE CAMPAIGN FOR UYGHURS, THE
COMMITTEE FOR FREEDOM IN HONG KONG, HONG KONG WATCH,
INTERNATIONAL CAMPAIGN FOR TIBET, UYGHUR AMERICAN
ASSOCIATION, UYGHUR HUMAN RIGHTS PROJECT, AND VICTIMS
OF COMMUNISM MEMORIAL FOUNDATION IN SUPPORT OF
RESPONDENT**

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BRIAN FIREBAUGH, *et al.*,

Petitioners,

v.

MERRICK B. GARLAND, in his official capacity as
Attorney General of the United States,

Respondent.

BASED POLITICS INC.,

Petitioner,

v.

MERRICK B. GARLAND, in his official capacity as
Attorney General of the United States,

Respondent.

CIRCUIT RULE 29(D) STATEMENT

Amici certify they are not aware of any other amicus brief addressing the subject of this brief—in particular, representing human rights community nonprofits who value free expression and want to ensure human rights advocates can continue to spread transparency outside the unrelenting purview and harassment of the Chinese government. A separate brief is necessary to permit *amici* joining this brief to offer their perspectives on their unique issues before the Court.

CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), amici certify as follows:

(A) Parties and Amici.

The parties to *TikTok Inc. v. Garland*, No. 24-1113, are petitioners TikTok Inc. and ByteDance Ltd. (“TikTok Petitioners”) and respondent Merrick B. Garland, in his official capacity as Attorney General of the United States. The parties to the first consolidated case, *Firebaugh v. Garland*, No. 24-1130, are petitioners Brian Firebaugh, Chloe Joy Sexton, Talia Cadet, Timothy Martin, Kiera Spann, Paul Tran, Christopher Townsend, and Steven King (“Creator Petitioners”) and respondent Merrick B. Garland, in his official capacity as Attorney General of the United States. The parties to the second consolidated case, *BASED Politics Inc. v. Garland*, No. 24-1183, are petitioner BASED Politics Inc. and respondent

Merrick B. Garland, in his official capacity as Attorney General of the United States.

Aside from the parties above, and any amicus briefs filed prior to and after this one, amici include: the Campaign for Uyghurs, the Committee for Freedom in Hong Kong, Hong Kong Watch, International Campaign for Tibet, Uyghur American Association, Uyghur Human Rights Project and Victims of Communism.

(B) Orders Under Review.

Petitioners seek direct review of the constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications (the “Act”) H.R. 815, div. H, 118th Cong., Pub. L. 118-50 (Apr. 24, 2024), such that there are no prior rulings under review.

(C) Related Cases.

To the best of amici’s knowledge, there are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, amici state that they have no parent corporations and that no publicly held company owns ten percent (10%) or more of any amici’s organizations.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

Amici certify that no party or party's counsel authored this brief in whole or in part, that no party or party's counsel provided any money intended to fund the preparation or submission of this brief, and no party or person—other than amici's counsel—contributed money intended to fund the preparation or submission of this brief.

CONSENT TO FILE

This brief is being filed on consent of the parties.

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**IDENTITY OF *AMICI*, INTEREST IN THIS MATTER,
AND SOURCE OF AUTHORITY TO FILE**

Pursuant to Fed. R. App. P. 29(a), the Campaign for Uyghurs, the Committee for Freedom in Hong Kong, Hong Kong Watch, the International Campaign for Tibet, the Uyghur American Association, the Uyghur Human Rights Project, and the Victims of Communism Memorial Foundation (together “*amici*”) represent that they seek to participate as *amici curiae* support the Protecting Americans from Foreign Adversary Controlled Applications Act.

The Campaign for Uyghurs (“CFU”) is 501(c)(3) a non-profit organization founded in 2017 in reaction to the ongoing genocide of the Uyghur people being perpetrated by the Chinese Communist Party in East Turkistan (now known as the Xinjian Uyghur Autonomous Region, China). CFU’s mission is to counter the Uyghur genocide by exposing the CCP, activating global grassroots organizations and civil societies, building solidarity with other persecuted communities, and enabling the Uyghur diaspora to construct productive campaigns to raise awareness and impact policy.

The Committee for Freedom in Hong Kong Foundation (“CFHK Foundation”) fights for Hong Kong and its people as China continues its crackdown on the city’s freedoms. The CFHK Foundation defends political prisoners, free media, and Hong Kong people’s right to live peacefully and freely after the handover to China in 1997. Hong Kong’s fate is linked to the preservation

of freedom, democracy, and international law in the region and around the world.

Hong Kong Watch (“HKW”) as founded in 2017, Hong Kong Watch is a UK-registered charity consisting of Hong Kongers and friends of Hong Kong, working closely with Hong Kong community groups in the UK, US, EU and Canada. HKW educates legislators, policy-makers and the media, and raise awareness among the wider public, about the violations of human rights and the rule of law in Hong Kong, and advocate for actions to assist Hong Kongers. HKW does this through a combination of in-depth research reports, topical briefings, opinion editorials, media interviews, and advocacy campaigns, focusing on immigration pathways for Hong Kongers, combating transnational repression, and holding Hong Kong officials to account for human rights violations.

The International Campaign for Tibet (“ICT”) is the largest Tibet support group in the world that helps Tibetans in their peaceful struggle for democracy and human rights and seek to preserve Tibet’s ancient culture of wisdom. Based in Washington, D.C., with offices in Amsterdam, Berlin and Brussels, ICT’s mission is to mobilize support for the Dalai Lama and the Tibetan people’s vision for their peaceful struggle for democracy and human rights.

The Uyghur American Association (“UAA”) is a non-partisan organization with the chief goals of promoting and preserving Uyghur culture, and supporting the right of Uyghur people to use peaceful, democratic means to determine their

own political futures. Based in the Washington D.C., region, the UAA serves as the primary hub for the Uyghur diaspora community in the United States.

The Uyghur Human Rights Project (“UHRP”) promotes the rights of the Uyghurs and other Turkic Muslim peoples in East Turkistan, referred to by the Chinese government as the Xinjiang Uyghur Autonomous Region, through research-based advocacy. UHRP was founded in 2004 as a project of the UAA and became an independent nonprofit organization in 2016. UHRP publishes reports and analysis, in English and Chinese, to defend Uyghurs’ civil, political, social, cultural, and economic rights according to international human rights standards.

Victims of Communism Memorial Foundation (“VOC”) is an educational, research, and human rights nonprofit organization devoted to commemorating the more than 100 million people killed by communism around the world and to pursuing the freedom of those still living under totalitarian regimes.

Amici are human rights non-profit organizations that are dedicated to shedding light on the blatant human rights violations occurring in the People’s Republic of China (“PRC”). Given TikTok’s current ownership structure, their activities are currently watched by the Chinese government even when abroad. Some *amici* are actual victims of the PRC’s pervasive and expansive surveillance regimes through TikTok itself. Thus, *amici* have a vested interest in ensuring that the Court upholds the constitutionality of the Act as it will further ensure their

safety when advocating and for exposing the blatant human rights abuses occurring the People's Republic of China.

INTRODUCTION AND SUMMARY OF ARGUMENT

The People's Republic of China ("PRC") government, led by the Chinese Communist Party ("CCP"), goes through extraordinary measures to maintain its authoritarian system. The CCP surveils its opponents and even "disappears" those with whom it disagrees – often using data obtained through such individuals' use of PRC-controlled apps on their phones. This draconian reality is why the Protecting Americans from Foreign Adversary Controlled Applications Act (the "Act") is a triumph for human rights and those that advocate for them. Its divestiture requirement surgically extracts the malignancy existing within TikTok—ByteDance. It is well-documented that the CCP leverages technology to conduct its espionage and surveillance campaigns.

Whether it is Huawei, DJI, or TikTok, their goal is the same: to threaten the safety of, and silence free expression by, anyone – in the PRC or around the world – who speaks out against the CCP's policies and human rights abuses.

In this brief, we explain how TikTok, under its current corporate structure, is a clear instrument for the CCP to harass, target, and silence activists and dissidents in the U.S., the PRC, and around the world; and how the Act is a necessary step toward protecting the physical and digital safety of those who seek to illuminate the atrocities occurring in the PRC.

ARGUMENT

I. The CCP Engages in a Global Campaign to Conceal and Enable Its Human Rights Abuses

Frankly, there is much the CCP would like to keep from the international community. The acts of barbarity the CCP commits on a daily basis shock the conscience. From mass genocides of religious minority groups to programs of punitive state-imposed forced labor to torture and imprisonment of intellectuals expressing dissenting views, the list of human rights violations committed by the state, often with assistance and collusion of tech companies, is extremely long.

Take the government's chilling and horrific treatment of Uyghur Muslims. The CCP has targeted this ethnic group in particular with "coercive population control methods, forced labor, arbitrary detention in internment camps, torture, physical and sexual abuse, mass surveillance, family separation, and repression of cultural and religious expression." U.S. Dept. of State, *The Chinese Communist Party's Human Rights Abuses in Xinjiang*, Website (last visited, Aug. 2, 2024), <https://2017-2021.state.gov/ccpabuses/>. Uyghur women are particularly vulnerable to the CCP's mistreatment in detainment centers as they are subject to "gang rape," forced sterilizations, and other forms of torture. Matthew Hill, David Capanale, & Joel Gunter, *Their Goal is to Destroy Everyone: Uighur Camp Detainees Allege Systematic Rape*, BBC (Feb. 2, 2021), <https://www.bbc.com/news/world-asia-china-55794071>. The system of oppression against the Uyghurs depends on a high-

tech network of surveillance, developed in cooperation with private companies.

According to a United Nations report, this monitoring has been “driven by an ever-present network of surveillance cameras, including facial recognition capabilities...and broad access to people’s personal communication devices and financial histories, coupled with analytical use of big data technologies.” Office of the United Nations High Commissioner for Human Rights, Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China (Aug. 31, 2022),

<https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>.

In Tibet, the CCP is also responsible for a slew of human rights violations that include “enforced disappearances; torture or cruel, inhuman, and degrading treatment...; harsh and life-threatening prison conditions; [and] arbitrary arrests or detentions...” to name a few. U.S. Dept. of State, *Tibet*, Website (last visited Aug. 2, 2024), <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/china/tibet/#:~:text=Significant%20human%20rights%20issues%20included,independence%20of%20the%20judiciary%3B%20political>. For instance, Buddhist monk Phende Gyaltsen died in prison in January, less than a year after his arrest in March 2022. *Id.* His crime? Working on the renovation of a Tibetan Buddhist monastery. *Id.* This is far from an isolated event. In August 2022, the

Chinese government authorities also arrested Karma Samdup for “inciting separatism” while “possessing photos of the Dalai Lama.” *Id.* To this day, we do not know where Samdup is or whether he is still alive.

In Hong Kong, the CCP is implementing a systematic, all-out assault on its promised autonomy, which breaks their promises under Hong Kong’s Basic Law and the UN-registered Sino-British Joint Declaration. U.S. Dept. of State, *China’s Disregard for Human Rights*, Website (last visited Aug. 2, 2024), <https://2017-2021.state.gov/chinas-disregard-for-human-rights/#:~:text=Outside%20the%20camps%2C%20the%20CCP's,prevent%20the%20observance%20of%20religious>. Under increasing pressure from the CCP, Hong Kong’s government has taken control of Legislative Council elections. *Id.* It has also enacted oppressive national security legislation that maintains severe penalties (*e.g.*, life in prison) for ill-defined crimes, such as “secession, subversion, terrorism, and collusion with foreign powers.” *Id.* What is more, Hong Kong authorities are “removing books critical of the CCP from bookstore and library shelves, banning democratic political slogans, and requiring schools to enforce censorship of teachers and students.” *Id.* The Hong Kong government has also gone after a viral protest song “Glory to Hong Kong,” leading to its removal from multiple online platforms. Both local and overseas Hong Kong citizens have been arrested and jailed for online speech made locally and abroad, and for subscribing

to overseas pro-democracy activists' online platforms. Hong Kong is becoming a police state under the iron thumb of the CCP.

And these are just some of the atrocities that have accidentally leaked out of the PRC. There are untold heinous acts that the CCP-censorship machine has swept up. Given the PRC's impressive, yet clandestine, espionage prowess, we may never get a full picture.

But the CCP's reign of repression and human rights abuses does not end at its own borders. To be sure, China is a surveillance state led by its dominate party the CCP. The CCP's true goal, however, is to export its system and practices – including so-called “digital authoritarianism” - to the entire world, as Congress and others have repeatedly documented over the years. *See generally, The Long Arm of China: Exporting Authoritarianism with Chinese Characteristics*, 115 Cong. 2 (2017), <https://www.congress.gov/event/115th-congress/house-event/LC59101/text>; Paul Scharre, *The Dangers of the Global Spread of China's Digital Authoritarian*, Center for a New American Security (May 4, 2023), <https://www.cnas.org/publications/congressional-testimony/the-dangers-of-the-global-spread-of-chinas-digital-authoritarianism>. The CCP expends an enormous amount of resources to silence dissenters and engage in reticulated surveillance campaigns around the world. Surveillance is an essential feature to its strategy, because you cannot target and silence dissenting voices, if you do not know where or who they are.

In 2014, Beijing formally expanded its anti-corruption campaign, known as Skynet and Fox Hunt, to target PRC officials living abroad. Zach Dorfman, *The Disappeared*, Foreign Policy (Mar. 29, 2018), <https://foreignpolicy.com/2018/03/29/the-disappeared-china-renditions-kidnapping/>. Due to Skynet and Fox Hunt, China claims to “have repatriated more than 3,000 individuals” between late 2012 and 2018. *Id.*

In mainland China, the use of kidnapping and illegal detention is so common it even has a name, “shuanggui.” *Id.* Reports dated back to 2018 show that the CCP has implemented shuanggui techniques abroad. *Id.* For instance, in Australia, there were “multiple cases” where individuals “were beaten or drugged and then dragged onto a boat” to China. *Id.*

There is strong evidence that this is occurring in the United States. For instance, Amnesty International’s report—based on interviews from Chinese students from 24 European and U.S. universities—found that PRC-citizen college students are especially vulnerable.. *On My Campus, I Am Afraid*, Amnesty International, Report (May 12, 2024), https://www.amnestyusa.org/reports/on-my-campus-i-am-afraid-chinas-targeting-of-overseas-students-stifles-rights/?utm_source=substack&utm_medium=email (“Amnesty International Report”). The students who participated in the study believed that, if they did not toe the Party line, they would be “subjected to surveillance, harassment or

intimidation by Chinese authorities....” *Id.* Indeed, there have been several prosecutions of individuals for “stalking, harassing and spying on U.S. residents on behalf of the PRC Secret Police.” Dept. of Justice, *Five Individuals Charged Variously with Stalking, Harassing and Spying on U.S. Residents on Behalf of the PRC Secret Policy*, Website (last visited Aug. 2, 2024), <https://www.justice.gov/opa/pr/five-individuals-charged-variously-stalking-harassing-and-spying-us-residents-behalf-prc-0>. In fact, the House Select Committee on China held an entire hearing on precisely such threats, with firsthand testimony from individuals who have been threatened and attacked by the CCP right here on U.S. soil. *Hearing: CCP Transnational Repression – The Party’s Effort to Silence and Coerce Critics Overseas*, 118 Cong. (Dec. 13, 2023), [transnational-repression-partys-effort-silence-and-coerce](#).

But how could the CCP do this while these students, citizens, and émigrés reside overseas?

The PRC government passes laws with the intent to aid the CCP in capturing and detaining PRC citizens living internationally. As the Brookings Institution articulated, “Beijing has become increasingly concerned with the state’s ability . . . to extend the CCP’s extraterritorial reach over its citizens’ activities.” Lindsey W. Ford, *Extending the Long Arm of the Law: China’s Enforcement Drive*, BROOKINGS INSTITUTE (Jan. 15, 2021),

<https://www.brookings.edu/articles/extending-the-long-arm-of-the-law-chinas-international-law-enforcement-drive/>. To do so, the CCP has “expanded use of international police liaisons, intelligence sharing arrangements, and bilateral extradition treaties as a means of better controlling China’s overseas citizens.” *Id.* These measures “need to be understood in the context that the Chinese government has been pursuing Chinese dissidents living abroad for several years....” Nick Mordowanec, *China Crack Down on Citizens Abroad as People Flee Country*, NEWSWEEK (May 5, 2023), <https://www.newsweek.com/china-cracks-down-citizens-abroad-1798716>.

The FBI put it plainly in an unclassified Counterintelligence Bulletin:

“The FBI assesses Chinese government officials are almost certainly employing transnational repression techniques to target US-based Uyghurs and other Chinese diaspora members in the United States. These officials target US-based Uyghurs through in-person and digital means to silence dissent, issue instructions, collect information, and compel compliance. Threatened consequences for non-compliance routinely include detainment of a US-based person’s family or friends in China, seizure of China-based assets, sustained digital and in-person harassment, Chinese government attempts to force repatriation, computer hacking and digital attacks, and false representation online.” Fed. Bureau of Investigation, *Chinese*

Government Transnational Repression Violates US Laws and US-Based

Uyghurs' Rights, Unclassified Counterintelligence Bulletin (Aug. 11, 2021),

https://s.ipvm.com/uploads/embedded_file/07b033ce06e5a7a52f4591f49b3feb19be3a558d132df949f515d3107fa4da87/20bad084-f6b4-4d5f-980a-7e04ca90158c.pdf.

We also know this to be true from the personal experiences of our communities.

The CCP's recent enactments of national security laws must be read in that same context, because these laws have the practical effect of turning Chinese-based technology companies, like TikTok, into its international surveillance and data collection arm on those dissidents and activists living overseas. Indeed, these laws give Beijing the ability to spy on their citizens anywhere they travel and even enlist them to assist and cooperate with China's intelligence services while visiting foreign countries. These laws also give Beijing the ability to demand that companies based in China spy on Americans who dare to challenge the CCP and its preferred global narratives.

As we explain in the next section, TikTok plays an important role for the CCP in that regard. The application, under its current CCP control, is a direct threat to our physical safety in the United States.

II. TikTok and ByteDance Are Surveillance and Repression Instruments of the CCP

Given its pervasive nature, technology is a critical facet of the CCP's

transnational repression. The CCP coerces every technology company, both domestic and foreign, to engage in its surveillance and censorship gambits. It uses telecom giant, Huawei, to develop AI software designed to recognize Uyghur Muslims and has it notify police to have them detained. Drew Harwell, *Huawei Tested AI Software that Could Recognize Uighur Minorities and Alert Police, Report Says*, WASHINGTON POST (Dec. 8, 2020 10:30 AM), <https://www.washingtonpost.com/technology/2020/12/08/huawei-tested-ai-software-that-could-recognize-uighur-minorities-alert-police-report-says/>. And TikTok is no different.

As Petitioners note in their opening brief, foreign companies are not immune from the CCP's iron fist with respect to their operation *inside of China*. What Petitioners completely (and likely intentionally) ignore is how none of this compares to ByteDance's role – because ByteDance, and thus TikTok, is required to comply with PRC laws and demands *globally*. ByteDance's Beijing offices “included a special unit of Chinese Communist Party members who monitored “how the company advanced core Communist values.”” David Leonhart, *TikTok's Pro-China Tilt*, N.Y. TIMES (Apr. 24, 2024), <https://www.nytimes.com/2024/04/24/briefing/tiktok-ban-bill-congress.html>. To ensure this, ByteDance has placed CCP officials in key leadership roles in the company, which include ByteDance's chief editor, deputy chief editor, and vice

president of government relations. Senator Marco Rubio, *TikTok Parent Company Poses a National Security Threat*, NEWSWEEK (Apr. 3, 2023 at 3:18 PM), <https://www.newsweek.com/marco-rubio-tiktok-parent-company-poses-national-security-threat-opinion-1886487>. ByteDance’s Communist Party Secretary has even said the CCP will “take the lead” to ensure “all product lines and business lines” answer to the Party. H.Res. 1051, <https://www.congress.gov/bill/118th-congress/house-resolution/1051/text>.

Because ByteDance owns TikTok, it too is under the control of the CCP. Indeed, “golden shares” give the Chinese government more direct involvement into the day-to-day businesses of tech companies, which includes the content they host.” Laura He, *Wait, is TikTok Really Chinese?*, CNN (Mar. 28, 2024, updated on 8:21 AM), <https://www.cnn.com/2024/03/18/tech/tiktok-bytedance-china-ownership-intl-hnk/index.html>. Professor Tim Wu also identified ByteDance’s golden share as the economic vessel allowing “the government [to] shape[] TikTok content in accordance with party preferences.” Tim Wu, *When It Comes to TikTok, the World’s Democracies Have Played the Sucker for Far Too Long*, N.Y. TIMES (Apr. 29, 2024), <https://www.nytimes.com/2024/04/29/opinion/tiktok-divestiture.html>.

Indeed, a study from Rutgers University gives these claims further merit. Network Contagion Research Institute & Rutgers University, *A Tik-Toking*

Timebomb: How TikTok's Global Platform Anomalies Align with the Chinese Communist Party's Geostrategic Objectives, Intelligence Report (2023),

[https://networkcontagion.us/wp-content/uploads/A-Tik-Tok-ing-](https://networkcontagion.us/wp-content/uploads/A-Tik-Tok-ing-Timebomb_12.21.23.pdf)

[Timebomb_12.21.23.pdf](https://networkcontagion.us/wp-content/uploads/A-Tik-Tok-ing-Timebomb_12.21.23.pdf). The study analyzed a volume of posts with certain hashtags on TikTok and Instagram and compared the number of posts on each platform. For example, terms like #TaylorSwift and #Trump were given about equal treatment on both platforms. But for #Uyghur or #Uighur the ratio jumped.

Id. For every eight posts with that hashtag on Instagram, there was only one on TikTok. This was not the only topic, for #Tibet it was 30-to-1, for

#TiananmenSquare 57- to-1, and for #HongKongProtest 174-to-1. *Id.* This

indicates that TikTok clearly and covertly targets this information and suppresses it. This also demonstrates that China has more control over the company than what

TikTok has said publicly. Sapna Maheshwari, *Topics Suppressed in China Are Underrepresented on TikTok, Study Says*, N.Y. TIMES (Dec. 21, 2023),

<https://www.nytimes.com/2023/12/21/business/tiktok-china.html>. Complying with

a foreign adversary government's secret demands to alter a commercial algorithm to shape the global information environment in that government's favor is illicit conduct at best and espionage at worst, but certainly nothing that gives rise to constitutional protections.

TikTok is a well-positioned Trojan Horse. Not only is it a convenient tool

for covertly controlling the information environment within the United States at the direction of a foreign adversary government, but it also is a great weapon to find, silence, and detain dissidents abroad. The State Department minced no words when it concluded that “TikTok creates opportunities for PRC global censorship.” Global Engagement Center, *How the People’s Republic of China Seeks to Reshape the Global Information Environment*, Special Report, Dept. of State (Sep. 28, 2023), https://www.state.gov/wp-content/uploads/2023/10/HOW-THE-PEOPLES-REPUBLIC-OF-CHINA-SEEKS-TO-RESHAPE-THE-GLOBAL-INFORMATION-ENVIRONMENT_508.pdf. In its recent report, the State Department found that ByteDance uses TikTok to block potential critics of Beijing, possibly including those outside the PRC, from using its platforms. *Id.* At p. 21. As of late 2020, ByteDance maintained “a regularly updated internal list identifying people who were likely blocked or restricted from all ByteDance platforms, including TikTok.” *Id.*

On May 3, 2023, TikTok suspended American think tank Acton Institute’s account on its platform and deleted several promotional videos of *The Hong Konger: Jimmy Lai’s Extraordinary Struggle for Freedom*, which is a documentary feature about Hong Kong and pro-democracy activist Jimmy Lai who has been imprisoned for its pro-democracy advocacy for over 1,300 days. The videos had been viewed more than four million times on TikTok within two weeks, amassing

more than 64,000 likes and 27,000 followers on the Institute's account. Although TikTok reinstated the account and explained it as an "error" under media attention, the removed videos had not been restored. *Acton Institute's TikTok Account Suspended for Posting Content About Jimmy Lai Documentary*, Hong Kong, Acton Institute, Press Release (May 3, 2023), <https://www.acton.org/press/release/2023/acton-institutes-tiktok-account-suspended-posting-content-about-jimmy-lai>.

Prior to this litigation, TikTok representatives even have slipped up and admitted as much. "A TikTok executive said at a U.K. parliamentary hearing...that the video-sharing platform previously censored content that was critical of China, especially videos about Uighur Muslims being detained in Xinjiang." Ursula Perano, *TikTok Executives Says App Used to Censor Content Critical of China*, AXIOS (Nov. 7, 2020), <https://www.axios.com/2020/11/07/tiktok-censor-content-privacy-app-uighur>. TikTok even maintained a list of "banned words" and instructed "its moderators to censor videos that mention Tiananmen Square, Tibetan independence, or the banned religious group Falun Gong, according to leaked documents." Alex Hern, *Revealed: How TikTok Censors Videos that Do Not Please Beijing*, THE GUARDIAN (Sep. 29, 2019), <https://www.theguardian.com/technology/2019/sep/25/revealed-how-tiktok-censors-videos-that-do-not-please-beijing>. And, as DOJ noted in its brief, the

Intelligence Community has determined that ByteDance has “taken action in response to [Chinese government] demands to censor content outside of China.” DOJ Brief at 40. This certainly parallels the personal experiences of our communities, who have experienced ByteDance acting as an arm of the CCP firsthand. *E.g.*, Isobel Asher Hamilton, *ByteDance Tried to Build an Algorithm to Censor Uighur Livestreams on TikTok's Chinese Sister App, a Former Employee has Claimed*, BUSINESS INSIDER (Feb. 19, 2021, 5:55 AM), <https://www.businessinsider.com/bytedance-uighur-livestreams-douyin-censorship-2021-2>; <https://www.vox.com/recode/2019/11/27/20985795/tiktok-censorship-china-uighur-bytedance>; Sara Morrison, *TikTok is Accused of Censoring Anti-Chinese Government Content, Again*, VOX (Nov. 27, 2019, 4:10 PM), <https://www.bbc.com/news/technology-49826155>.

In addition, consider the data TikTok collects. According to the company’s privacy policy, it collects consumers’ real-time location, search history and biometric data (e.g., fingerprints or facial imprints). TikTok, Privacy Policy (last updated Jul. 1, 2024), <https://www.tiktok.com/legal/page/us/privacy-policy/en>. The New York Times reported on research showing that “the web browser used within the TikTok app . . . lets the company track every character typed by users,” meaning TikTok could track users even off of the app, including “sensitive data such as login credentials on external websites.” Paul Mozur, Ryan Mac, & Chang

Che, *TikTok Browser Can Track Users' Keystrokes, According to New Research*, N.Y. TIMES (Aug. 19, 2022),

<https://www.nytimes.com/2022/08/19/technology/tiktok-browser-tracking.html>.

Worse, TikTok requires the use of your device's microphone to collect voiceprints. Without access to TikTok's source code, which only the company possesses, it's hard to know what the app does with the permissions it's given. But there is evidence that it records even when users aren't actively on it. TikTok users report that Apple's app-spying feature, which alerts devices' owners when apps access your microphone or camera, pinged them about TikTok accessing their mics when the app was closed. Harry Pettit, *I-Spy Tees Worried as New iOS14 'App Spying' Notifications Shows TikTok and YouTube Turn on iPhone's Mic When They Launch*, THE SUN (Sep. 22, 2020), <https://www.the-sun.com/lifestyle/tech-old/1514615/apple-iphone-ios14-app-tiktok-youtube-mic/>. If TikTok's access is as expansive as that implies, the Chinese government could use a smartphone as a listening device.

This “even includes data on users’ phone contacts who do not themselves use TikTok.” DOJ Brief at 1. When a TikTok user downloads the app, it provides ByteDance with the personal information (almost certainly including phone numbers, e-mail addresses, or other unique personal identifiers) of every single person in that user’s contact list. DOJ Brief at 27. Given the 170 million

Americans users of TikTok, this means the CCP has the personal contact information of virtually every American, including of human rights advocates who are some of the CCP's top targets and thus avoid downloading TikTok themselves. As human rights advocates, we often go to great lengths to conceal our real contact information, given the sophisticated signal intelligence capabilities of the PRC. But given the ubiquity of TikTok in America, despite our best efforts, this information is certainly being used to track, surveil, and engage in transnational repression against our communities.

This data alone is a treasure trove that has been used to spy on human rights activists in the United States, and to manipulate and silence U.S. citizens whose relatives and friends in China are targeted by the government. So long as TikTok remains under the ownership and control of ByteDance, it will also be under the ownership and control of the CCP. This means that nobody in our communities using TikTok's platform, or even who merely is in the contacts list of one of the 170 million Americans who have downloaded TikTok, can live without fear that the CCP will surveil them, use this data to threaten and coerce them, or even kidnap or detain them.

These fears are far from hypothetical as ByteDance has been found to use TikTok's data to silence and surveille dissenters abroad. Indeed, TikTok has admitted to using data to spy on journalists who were investigating the company's

ties to China. Andrew Strohlein, *Should TikTok Be Banned?*, HUMAN RIGHTS WATCH (Mar. 24, 2023), <https://www.hrw.org/the-day-in-human-rights/2023/03/24>.

China has also used data ByteDance collects from TikTok to penalize dissenters, even if they are not within the borders of the PRC. How? Through “god credentials” ByteDance provides CCP officials. These god credentials allow the CCP to access TikTok’s platform and data to surveil dissidents and arrest them. This is precisely what the CCP did during the Hong Kong protests. Under penalty of perjury, a former head of engineering at ByteDance in the United States, Yintao “Roger” Yu, explained that this so-called god credential allows the CCP a backdoor to firewalls ByteDance designs to protect user data. Erin Hale, *China Spied on Hong Kong Activists Using TikTok, Lawsuit Claims*, ALJAZEERA (Jun. 7, 2023), <https://www.aljazeera.com/economy/2023/6/7/china-spied-on-hong-kong-activists-using-tiktok-lawsuit-claims> (“Yu Article”). Yu went on to testify that “[t]his information was used to determine both the users’ identity and locations.” *Id.* And that the CCP accessed data via TikTok’s app stores to obtain “all the users’ direct messages, their search histories, the content viewed by the users, and duration.” *Id.* It does not stop there; he further elaborated that TikTok also gave the CCP access to user device data, too. This included “their network information, SIM card identifications, and IP addresses....” *Id.*

And who were the CCP's targets? According to Yu, it was "protestors, civil rights activists, and supporters [of Hong Kong's independence]...." *Id.* Roger Yu's allegations indicate that the CCP is using (at least in part) ByteDance's corporate structure to access TikTok data with the intent to identify and monitor activists' locations and communications.

This reality poses a potent and particularized threat for the PRC activist community as they are most likely to want to use online platforms to get their message out en masse internationally and are the direct targets of the CCP's censorship crusade. Made In China Journal, *Lest We Forget: The Missing Chinese Activists of 2021*, Article (Dec. 28, 2021),

<https://madeinchinajournal.com/2021/12/28/lest-we-forget-the-missing-chinese-activists-of-2021/>. As has been widely reported, "activists old and young continue to disappear into the [CCP's detainment] system." *Id.* The detention of activists "for legitimate social activism—for instance supporting worker rights and gender equality, or holding the government accountable..." is only going to continue with TikTok's ubiquity. *Id.* Once detained, "...they have little or no communication with the outside world for months and months," even with their loved ones. *Id.*

It follows that, no matter the distance, ByteDance's relationship with TikTok creates a Tolkienesque Eye of Sauron, assuring that no opponent of the CCP falls outside the CCP's unrelenting purview. To be sure, TikTok's relationship with

ByteDance only serves to help the CCP more efficiently identify, extradite, and detain human rights activists no matter where they are with the intent to silence them for good.

In sum, while ByteDance maintains ownership over TikTok, so too does the CCP. Also, solutions like Project Texas do not ameliorate the concern. As we explain below, Project Texas is merely a façade to allow the CCP to continue to harass and surveil our communities, because it does not actually address the fundamental problem of CCP control created by PRC ownership. Full stop.

III. The Act Places Necessary Safeguards to Ensure that the Chinese Government Cannot Surveil and Target Activists

Without the Act, ByteDance and, by extension, the CCP will never let TikTok be a safe place for those who have dedicated their lives to shedding light on China's opacity of evil. It will, instead, be a place where the CCP can spy, silence, and detain any individual who fights to protect Chinese citizens from the human right atrocities happening every day under CCP rule.

Even TikTok's mixed corporate citizenship in both the U.S. and Singapore does nothing to shield it from China's legal reach because ByteDance's ultimate ownership keeps it within the jurisdiction of PRC law. This is by design. Not only that, TikTok has PRC engineers working for it currently. But even if TikTok fired every one of its local PRC employees, the fact that ByteDance employees can access TikTok's data would keep this law in play.

China's 2021 Cyber Vulnerability Reporting Law adds yet another legal hook into TikTok. The U.S. National Counterintelligence & Security Center ("NCSC") has identified that this law "may provide PRC authorities the opportunity to exploit system flaws before cyber vulnerabilities are publicly known." U.S. National Counterintelligence & Security Center, *Safeguarding Our Future*, NCSC Bulletin (last visited Aug. 2, 2024), https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/FINAL_NCS_C_SOF_Bulletin_PRC_Laws.pdf. ByteDance's ownership interest in TikTok would be the legal anchor the CCP could use to find TikTok's cybersecurity flaws to leverage for espionage without American users or PRC citizens visiting the U.S. knowing about it. Indeed, there is certainly no shortage of code in which the PRC, the world's most sophisticated techno-surveillance state, could even forcibly insert such vulnerabilities, with compliance by ByteDance mandated by PRC law. It is quite suspicious, as DOJ notes in its appendix, that TikTok's "Source Code contained 2 billion lines of code . . . [while] the Zoom application contains 10 million lines of code, and Windows Operating System contains approximately 50 million." DOJ Brief Appendix at 22.

Another legal avenue for the CCP to surveil its citizens extraterritorially is through China's now infamous 2021 Data Security Law. The law allows the government to regulate private companies' practices for storing and managing

information in China if they collect “core data”—a broad term that means anything Beijing sees as a national or security concern. Joel Thayer, *On TikTok, It’s All Fun and Games Until China Wants Your Info*, THE WALL STREET JOURNAL (Jul. 21, 2022, 12:47 PM), <https://www.wsj.com/articles/on-tiktok-its-all-fun-and-games-until-beijing-wants-your-info-china-ccp-national-security-app-store-apple-google-information-data-11658347613>. Even if TikTok sets its default storage location for U.S. users’ data to Oracle Cloud Infrastructure, it is clear that PRC-based employees are still accessing the data. *Id.* Thus, if PRC-based engineers can still access that content, they could easily store it in mainland servers. *Id.* This is one reason why solutions, like Project Texas, that merely store data in the U.S. would be ineffective to prevent the CCP from controlling and manipulating TikTok from Beijing.

Even more terrifying is when Yu explained that this backdoor “allows certain high-level persons to access user data, no matter where the data is located, even if hosted by a U.S. company with servers located in the U.S.” *See* Yu Article. Yet another reason why Project Texas just would not quell the Act’s concern over China’s espionage, because clearly where the data is stored simply does not matter. This is why the Act is needed even if TikTok operated under Project Texas.

The United States is not alone in viewing these laws as intentionally extraterritorial. The Canadian Security Intelligence Service (“CSIS”), too,

concluded the same in its 2023 CSIS Public Report. CSIS Public Report (2023), www.canada.ca/content/dam/csis-scrs/documents/publications/Public_Report_2023-eng-DIGITAL.pdf (“CSIS Report”). The CSIS Report found that, in 2023, the CCP “continued to expand the domestic powers and capabilities of its security services.” *Id.* Indeed, CSIS found that General Secretary Xi Jinping introduced these suite of national security laws to give “its security and intelligence services extra-judicial and extraterritorial powers.” *Id.*

These concerns are not only limited to government-affiliated entities, but also shared by many PRC-citizen students who study in the U.S., too. The students who participated in Amnesty International survey found that they “are living and studying in constant fear of being targeted under China and Hong Kong’s national security and intelligence laws....” *See* Amnesty International Report.

These facts make ByteDance’s ownership of TikTok untenable for human rights activists because it gives the Chinese government a foothold into both companies’ data management practices that the CCP can use and has used to identify and detain them well outside PRC borders. These expansive laws have real world consequences for Chinese human rights activists around the world, because it “elevate[s] the risk of exit bans (a ban to prevent specific individuals from leaving China) or the arbitrary detention of anyone, including foreigners who live,

visit, or work in the PRC.” CSIS Report.

This is why the Act is so important, as it removes this malignancy from TikTok with surgeon-like precision. The Act’s divestiture requirement ensures that every user, no matter their denomination, creed, or belief, can express themselves freely outside the clear controls covertly exercised by the CCP. And this divestiture requirement was carefully crafted – ensuring it is achievable for ByteDance to execute upon. In fact, even if ByteDance does not divest within the initial approximately one year period anticipated by the Act, the law provides an infinite window in which ByteDance can *subsequently* divest and thus restore TikTok on app stores. Any restriction “shall cease to apply in the case of a foreign adversary controlled application with respect to which a qualified divestiture is executed after the date on which a prohibition . . . applies.” Pub. L. 118-50 § 2(c)(1)(B). And the Act also provides that a qualified divestiture is a “divestiture or *similar transaction*,” *id.* at §2(g)(6), providing ByteDance with options to relieve itself of CCP control other than a traditional sale. And with respect to ByteDance’s contention that TikTok cannot operate without its proprietary CCP-controlled algorithm, this defies the reality that multiple other U.S. social media platforms operate similar services that rely on U.S.-based algorithms. Surely a multi-billion dollar company with a vast technology workforce is capable of developing the same. ByteDance is claiming a divestment is impracticable not because it cannot

complete a divestiture, but rather because the CCP does not want to lose its cherished spy tool with which it has, and seeks to continue to, target and repress our communities and human rights activists around the world.

Because of the Act, users who are targets of the CCP's transnational repression and human rights abuses, in particular, will be able to breathe easier knowing that their actions and conversations they have on TikTok's U.S. platform will not be monitored by a foreign government dedicated to surveilling and silencing or, worse, imprisoning them for holding beliefs contrary to the CCP's.

CONCLUSION

We hope our perspective, as members of communities who have experienced the human rights abuses and digital authoritarianism of the CCP firsthand, will help the Court understand the practical implications of allowing a foreign adversary government to continue to use a dominant social media platform in the United States as a tool of covert surveillance and repression. The Act protects U.S. national security, but also for the sake of human rights, true freedom of expression, and ensuring our physical safety against the CCP's transnational repression, the Court must uphold the Act's constitutionality. Indeed, the Constitution does not protect a PRC company's right to act as an unregistered foreign agent – covertly shaping the American information environment through a non-expressive algorithm at the instruction of a foreign adversary government.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, on August 2, 2024, that:

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